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NATIONAL ASSOCIATES OF ATTORNEYS GENERAL

2013 SUMMER MEETING

JUNE 18, 2013

INTELLECTUAL PROPERTY CRIMES ONLINE:

DANGEROUS ACCESS TO PRESCRIPTION DRUGS AND PIRATED CONTENT

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1 DOUG: All right. This afternoon's session will
2 address two aspects of international property. I'm not
3 going to make any Mississippi intellectual jokes, nope.

4 The first will cover I.P. crimes online, and
5 Mississippi Attorney General Jim Hood, who co-chairs the
6 NAAG I.P. Committee with Virginia Attorney General Ken
7 Cuccinelli, will moderate, and General Hood's all worked up
8 an exercised and ready to go. So here we go.

9 MR. HOOD: Good afternoon. We are here with a
10 panel today, and I'm going to try to give you an update for
11 General Louie and General Cuccinelli, who are both co-chairs
12 of the Intellectual Property Theft Committee along with me.
13 So I'll be making some initial comments to kind of get up to
14 speed as to what letters have occurred and what all the
15 committee has tried to do in this area.

16 We also have a panel who will give comments. Tom
17 Galvin is executive director of the Digital Citizens
18 Alliance. Chris Castle is managing partner of Christian L.
19 Castle Attorneys, and Benjamin Edelman is an associate
20 professor at Harvard Business School.

21 So I have some initial comments to try to boil
22 this down in as fast as possible. I've been co-chair of the
23 Intellectual Property Theft Committee for, I think, four
24 years, so it's taken me four years.

25 I am a little bit slow, Doug, so, you know, and I

1 admit it.

2 DOUG: Uh-huh.

3 MR. HOOD: To kind of get a handle on some of the
4 issues that we're dealing with with, you know, Internet
5 issues with intellectual property theft -- and so, it's
6 taken quite a bit of time to try to work through these
7 issues and make sure that we actually understand what some
8 of the search engines are doing, and I've been a prosecutor
9 my entire career.

10 I was assistant A.G. five years, a D.A. for eight,
11 and also, as being A.G., I'm in my tenth year. So
12 basically, the way I've done practice is before juries, and
13 it's just been straight, right to the point, and I'll try to
14 run through the background information as fast as possible.

15 But we have kind of a special guest here today.
16 We have Emma Kelly, who is Chris Kelly's daughter. Martha
17 Coakley's head of the Digital Evidence Lab in the Maryland
18 -- excuse me -- in the Massachusetts attorney general's
19 office.

20 She's 14 years old. She took off school today,
21 but she's going to be doing some work online live to show
22 you how easy it is for a 14-year-old to download movies that
23 are in the theaters or buy drugs online or things of that
24 nature. So we will have some parts of this that will be
25 live. I will be presenting some slides of some drug buys

1 that my investigators have made from Google advertisers. So
2 hopefully, we will be able to make the electronics all work
3 and get through this.

4 What we're looking at is a huge issue for
5 attorneys general, and I've equated it sort of as the battle
6 that my predecessors had when I was assistant A.G. with
7 tobacco. This is an issue that affects so many businesses
8 and our individual and public safety issues, and it will
9 take a lot of work from us.

10 You know, this is a very complex area that we have
11 to deal with, and you have to understand a lot of these
12 terms of art. There are a lot of them, just like in law,
13 terms of art.

14 You know, they use things like auto complete. You
15 know? Some of you know exactly what I'm talking about.
16 Some of you don't understand what auto complete is, but I'll
17 try my best to not bore those who know the answers, yet, at
18 the same time, help educate those who may not understand
19 exactly what all has occurred.

20 And, when I'm talking about search engines, you
21 know, Google's got 84 percent of the mobile market, about 79
22 -- I believe it's about 70 percent of the search market.
23 So, you know, they're the biggest search engine out there,
24 and they're the ones that we have dealt with.

25 This sort of began when they entered into a non-

1 prosecution agreement and paid a \$500 million fine to the
2 federal government in August of 2012 for allowing out-of-
3 country sales of pharmaceutical drugs without prescriptions.
4 They entered into a non-prosecution agreement there again in
5 August of 2012.

6 We had a meeting in November where we had the
7 Intellectual Property Theft Committee convene all the rights
8 holders, you know, the payment processors. That's Visa and
9 the ones who process the money. Had many at the table, and
10 we invited Google to be there, and, when we started asking
11 them questions such as -- and we pointedly asked them, you
12 know, why do you have an auto complete feature, and auto
13 complete is -- can you all pull that slide up to show them
14 what auto complete is?

15 Okay. I'm handing over this thing.

16 (Laughter)

17 When you type in prescription drugs on, then you
18 get the drop-down feature, and you'll see the red line that
19 shows you with no prescription. That's auto complete, and
20 so, this is an issue we raised with Google.

21 You know, why would you suggest to someone to buy
22 drugs online without a prescription when it may be somebody
23 innocent that's trying to come in and, you know, actually
24 purchase prescription drugs online with a prescription, but
25 it made that suggestion, and what they -- the people they

1 sent down to the committee -- and several of you were there.
2 I appreciate your attendance, but they just didn't answer
3 the question. So we wrote them a letter.

4 The Intellectual Property Theft Committee co-
5 chairs wrote them a letter February of this year, 2013, and
6 we asked some pointed questions, not only of Google, but the
7 other search engines and all the other rights holders as to
8 what we could do, and we didn't get an answer from Google,
9 and so, April 1st I wrote a letter, and it pointed out this
10 same issue, you know, buying prescription drugs.

11 You just could punch in instead of Oxycodone, the
12 whole word, you just punch in oxy. I pointed out in this
13 letter hey, you're getting auto complete that says buy it
14 without prescription online. You know, it's suggesting to
15 people to go to that site.

16 Well, finally we got a response to our committee
17 letter, and that was on April 19th, 2013, and they didn't
18 answer the question. You know, I think in some of the
19 materials, we have a letter -- maybe you see in Exhibit 1 a
20 letter from Google, and, on page 4, you know, where they're
21 actually supposed to respond about the auto complete issue
22 of without -- purchasing drugs without a prescription, they
23 just say oh, well, it wouldn't be appropriate for us to
24 block the word prescription, something that broad or online.

25 Well, the fact is I'm not worried about the word

1 prescription or drugs or any of that nature. It's the
2 phrase that they're using, and, when they make this
3 suggestion, I think they're stepping over the line out of
4 section 230 protections that Doug's excellent panel this
5 morning discussed, and so, I wrote them a letter back, which
6 was sort of in response to theirs, but May 17th I sent you a
7 letter. I don't know if you got it, but I said hey, you
8 know, this issue is escalating. Here are the issues that
9 we're having to deal with, and I sent Google another letter,
10 and then, on May 20th, they responded to my April 1st
11 letter, and their response was go to the payment processors.
12 Make them cut the money flow off. We're not going to do
13 anything to stop suggesting on auto complete features such
14 as, you know, purchase drugs without a prescription, and it
15 was another letter in which they just didn't answer any
16 questions, and they keep giving these statistics.

17 "We take down more than any other search engine
18 out there." Well, they've got -- there again, they've got
19 70 percent of the market. You know, Google -- I mean,
20 Microsoft owns Bing, which has about 17 percent of the
21 market. So, you know, they should take down more from
22 notices of copyright violations.

23 So, after reading the letter that they responded
24 to me, I wrote a letter May 21st to the CEO of Google and
25 asked him and his chief counsel to appear before us and be

1 on this panel. Instead of responding to me, what they did
2 was they called Admiral McPherson and said we're not coming,
3 and then, the next thing I received was a letter from a
4 lawyer where, you know, in the old criminal courts where I
5 roam, you know, they say they lawyered up, basically, and
6 they said -- lawyers said you communicate with us. You
7 know, they threatened litigation and things of that nature,
8 because I told them in my May 21st letter if you don't, you
9 know, come and be a part of the panel and be part of the
10 discussion and work with us to make some of these changes
11 that we've been suggesting since November, then I'm going to
12 call on my colleagues to issue civil investigative demands
13 or subpoenas to get some of these documents that we think
14 will show that they have, in fact, manipulated their
15 algorithm to allow for these searches of some of these
16 pirating sites to pop up.

17 So I sent them a litigation hold letter June 10th
18 asking them anything that they took down to preserve it,
19 emails and so forth. Now, what's happened since these
20 series of letters have occurred -- then they began to take
21 down information.

22 They began -- in fact, now -- do you have that
23 second slide where they -- if you get online -- any of you
24 got laptops, you're welcome to join in with this. If you go
25 online and punch in oxy, O-X-Y, codone, now it doesn't have

1 the auto complete that says without a prescription. They've
2 made these changes. They won't admit to them, I don't
3 think. I hadn't heard any, you know, admission by them that
4 they've made these changes, but they began to make these
5 changes.

6 And then, we noticed that about two-thirds of the
7 videos that showed you how to purchase prescription drugs
8 online without a prescription have been taken down off
9 YouTube. I mean, they literally had -- and we have -- I'll
10 show you some of the slides in a little while. You know,
11 all we have captured is just the still page of a guy who
12 tells you in a video on YouTube how to go online and
13 purchase prescription drugs without a prescription.

14 YouTube, by the way, is owned by Google. So that
15 was part of their advertising platform. You see that video.
16 They've got ads over in the margins of where they're making
17 money off of every -- when people, you know, view these
18 videos. So they have a tremendous flow of income as a
19 result of their actions.

20 The last series of letters that I'll mention is,
21 on yesterday, Google advised that they had a third-party
22 group, who was actually monitoring all the pharmaceutical
23 companies' ads on their network, and so, I issued a
24 litigation hold letter for that third-party group yesterday
25 as well. So anyway, we've got somewhat of a feud started, I

1 suppose, but, you know, I don't want to have a fight with
2 this group. I want to see them work with us, and, you know,
3 the other companies have done that.

4 I went on online. I just was checking with Yahoo,
5 which is powered by Bing, Friday. Called them and said
6 look, you all have got this auto complete feature.

7 Today, if you go online, you're not going to see
8 this auto complete of buy prescriptions without -- buy drugs
9 without a prescription, in other words. They took it down
10 within three days.

11 We've been after Google since November. Google
12 wouldn't even appear to respond with us. They sent one of
13 the professors from Santa Clara. I think he is a consultant
14 for Google that spoke this morning on section 230. He
15 conveyed the message of what Google's saying.

16 They're saying, under section 230, come try us
17 out. We're going to kick out any of your criminal
18 prosecutions. We're going to try to remove you to federal
19 court. We're going to use this -- what was initially
20 intended to be a shield -- we're going to use it as a sword,
21 and that is the position that Google has taken, and I hope
22 we don't get to the point of litigation to find that out,
23 but, you know, I think we have to push this issue further,
24 and I suggest, toward the end, some ways in which I think
25 that we can make that happen.

1 Take, for example, AOL. Will Castleberry -- you
2 know, he's now with FaceBook, but AOL was always straight up
3 with us when Intellectual Property Theft Committee was
4 discussing with the Internet service providers about
5 filtering out child pornography. AOL was sitting on our
6 side, you know, speaking to the others saying we're doing
7 it. We're filtering it out on our system.

8 AOL -- if you went on two weeks ago, as far as I
9 know, two months ago, they don't allow those auto completes
10 to drop down and try to advise you and steer you to buying
11 prescription drugs without a prescription. So, you know, it
12 can be done.

13 You know, Google will say wait a minute. We got
14 an algorithm. Our algorithm -- we don't touch it. You
15 know? It's only driven by the number of queries that people
16 pose online, and therefore, there's more people out there
17 asking queries about buy prescription drugs online without a
18 prescription, and so, that is obviously not true, because
19 now, they have taken all this content down.

20 Used to you could punch in child, and it would
21 auto complete to child porn. They blocked that months ago,
22 but now they're blocking prescription drugs, but, when you
23 go on and ask a query about download, you punch in download,
24 auto complete goes download music for free, download movies
25 for free. You know?

1 All this content -- it directs you to go to these
2 sites, and, when you look at the search result, if you go
3 down and drop down and click on that for free, one of the
4 first ones you're going to see -- in fact, the Recording
5 Industry of America yesterday did a little survey of the top
6 songs. They ran 50 searches. Of that 50, 40 came up with
7 sites that were all rogue sites that Google was well-aware
8 of through these notices that are sent by RIAA.

9 In fact, the number one -- I think it was 78
10 percent of the time. The number one search result was
11 called MP3 Skull. They have received -- they -- Google has
12 received probably over 500,000 at this point -- notices from
13 the recording industry that MP3 is a rogue site that does
14 nothing else but sell pirated music, and they haven't taken
15 it down. They haven't delisted it. That's another one of
16 the terms that are used.

17 You got delisting and demoting. Delisting --
18 taking them off or at least push them down. Push them down
19 to last page. I mean, the legitimate sites like iTunes and
20 others -- they can't get to the top, because you got all
21 these bogus sites that are in the search results, and
22 they've got all the -- they -- Google has all of these
23 notices, and they're well-aware of these sites. Yet they
24 refuse to take them down. They will not work with other
25 industries.

1 You know, we A.G.s have convened the rights
2 holders and the banks and others, and the banks have done
3 great. They've responded. They've cut the flow to a lot of
4 these rogue sites, but, you know, you've still got the
5 search engine group is the one that we still have to deal
6 with and the domain issuers, the one who issued the domains
7 that they keep getting new names and keep populating back
8 up, but right now, I'm talking about just, you know, the
9 search engine aspects of it.

10 Moving on to the non-prosecution group, where they
11 paid \$500 million fine now, a fine, for selling prescription
12 drugs without a prescription, primarily from Canadian
13 pharmacies. In that agreement, they agreed to stop selling
14 ads to pharmacies outside the United States, and that's it.
15 They didn't agree to, you know, stop the search results.

16 There's two different things. You got the auto
17 complete, and then, you've got the search results that are
18 under it. They didn't agree to stop that part.

19 If you go on there right now, you're going to --
20 and Google -- buy prescription drugs or something, you're
21 going to see a lot of these sites. It'll still -- your
22 search results will show, you know, without a prescription.
23 So you're going to still be able to see all these sites.

24 Now, whether or not you can buy from it is a
25 different question. Some of our buys bought Oxycontin

1 recently, and they never ran our credit card through. They
2 oftentimes try to send you an email response that will
3 infect your computers in which they can use to do other
4 scams.

5 They may try to get your credit card number. You
6 know? They may try to steal your identity. So it's all --
7 you know, even if you can't buy the prescription, a lot of
8 it is a scam if you go on there and click on some of these.

9 But, in the non-prosecution agreement, just some
10 examples of where they actually -- what they actually wrote,
11 signed onto with the federal government, the United States
12 attorney's office in the state of Rhode Island, and Peter
13 Kilmartin has profited well, because the drug sale occurred
14 in the state of Rhode Island, and he was a part of that
15 forfeiture. They call it a forfeiture.

16 But what Google did was they had another one of
17 these third-party monitoring groups, and this third-party
18 group was supposed to be monitoring the ads for words that
19 would indicate that it is a pharmacy in one of their ads
20 that was not on U.S. shores. Okay? So that's all they're
21 looking for. They're only screening their ads, but, you
22 know, they weren't screening these words that they are
23 selling.

24 They have words that they can sell, and this
25 system that they have is called ad words. They sell -- you

1 know, they'll sell you a word which will lead you to a site,
2 the purchaser's site. Many of them were, you know,
3 counterfeit Web sites.

4 Well, they were -- on one hand, Google says well,
5 okay, we're screening over here any ads that we publish, but
6 their emails -- and the emails in this discovery are just
7 devastating. I think what we will see, if we issue civil
8 investigative demands, very much similar type email
9 communications, but these emails that are spelled out in
10 this prosecution agreement, non-prosecution agreement, which
11 is in your materials, and I encourage you to read the thing,
12 because it just goes through one after the other of things
13 that they did to try to get around the law, but they were
14 selling these ad words over here, and the emails indicated
15 that they clearly knew it, and they knew that Canadian
16 pharmacies and all these other pharmacies were purchasing
17 these words.

18 They're called key words. They were buying them
19 so it would lead to a priority of those rogue sites, but, at
20 the same time, those pharmacies offshore were smart enough
21 not to put any words in their advertising that that
22 screening system would catch that would indicate that it was
23 an offshore pharmacy. So that's a very complicated scheme,
24 but they're a smart company, and so, the feds caught them
25 and made them, you know, agree to stop that.

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1 There is a section in that non-prosecution
2 agreement that exempts state prosecutions, and so, this did
3 not bind the states. I want you to know that -- I'm going
4 to show some of these slides in just a minute, and I only
5 have a little time to show a lot of slides -- that I'm going
6 to notify the Department of Justice that I think these buys
7 that we made online from Google advertisers -- now, that's
8 important.

9 We bought it from people who were advertising on
10 Google. That violates this federal non-prosecution
11 agreement, and I'm going to encourage the U.S. attorney, who
12 did a great job in Rhode Island and the Department of
13 Justice, to look into this. We're going to send them the
14 evidence of our buys. I'm going to show you some lab
15 reports that we have here on slides.

16 So now, if we can roll through some of the slides
17 quickly. I'll try to point out, as we go -- and I have to
18 go very quickly, because we got some great panelists.

19 We made an Oxycodone purchase. This one they
20 never delivered. The others that they did. This is the
21 auto complete. You punch in Oxycodone online. Auto
22 complete goes to buy without a prescription. The first two
23 search results are Web sites that talk about no
24 prescription.

25 Go ahead.

1 There's the buy. See the click down at the
2 bottom, right? And that's the auto complete. It suggested
3 that you use this term.

4 These sites that are shown in the red box, the
5 second red box, are those which have been reported to Google
6 as having -- being a rogue site.

7 Go to the next one.

8 And there's -- oh, you went back to the buy.

9 Okay?

10 Oh, yeah, here's a Viagra purchase. You know?
11 You know it's a prescription, but we made this purchase
12 online of Viagra, a prescription drug. Viagra was -- and
13 there's the lab reports that it is, in fact, Viagra or the
14 chemical that's in Viagra.

15 And is that a counterfeit? Does it say Viagra?

16 UNIDENTIFIED SPEAKER: It says Viagra.

17 MR. HOOD: All right.

18 UNIDENTIFIED SPEAKER: It's (indiscernible)

19 Viagra.

20 MR. HOOD: All right.

21 So it may be counterfeit. You know? We don't
22 know. That's the problem with so much of this stuff is it
23 can be counterfeit.

24 Now, let me tell you another scheme that Google
25 pulled. They pulled this on the federal government in that

1 non-prosecution agreement. They say we're going to take
2 down Google Health, and it was a site that had all these --
3 this is back when they originally signed the non-prosecution
4 agreement in August of 2011.

5 I said 2012 a while ago. It was 2011 when they
6 signed this non-prosecution agreement, but they agreed to
7 take down Google Health. Okay. Well, they took it down,
8 but then, if you punched in Google query about buy Tramadol
9 or buy Oxycodone, it would do the dropdown without a
10 prescription.

11 You click on it, and one of the first results that
12 came up was an archive. An archive is a site that captures
13 all the things on the Internet, and then, it lists it. And
14 guess what? In that archive, the first one that pops up
15 there is Google Health. So you click on that, and then, you
16 go back into the live Google Health site that was supposed
17 to have been removed.

18 This archive Web site -- there's, like, three easy
19 steps that you can take to take your old archive stuff off,
20 but Google didn't do it. But guess what? Last week, it
21 came down. So that's another thing that they had a back
22 door for you to make buys through Google Health, and, you
23 know, they thought it didn't violate the federal
24 government's non-prosecution agreement. So archives is just
25 another little trick, and this is another purchase.

1 Go ahead. What was that one?

2 UNIDENTIFIED SPEAKER: That was an archive Google
3 Health.

4 MR. HOOD: Okay. That was an archive Google
5 Health buy.

6 This is bath salts. You know the battles we've
7 had with the bath salts. We made a buy. If you'll flip
8 through those slides.

9 This Google salts was an advertiser of Google.
10 So, I mean, it's like they're making money off of this sale.

11 You know, just imagine if one of the TV stations
12 ran an ad about, you know, here, young person, 14-year-old,
13 you can go online and buy drugs without a prescription, or
14 imagine if the Boston Globe ran an ad about telling a kid
15 how to go buy drugs or steal somebody's CD, those kind of
16 things. We would be all over them.

17 Yet kids can sit in their own house and make these
18 kind of buys just like my investigators did. There is a
19 different rule for publications and television, because
20 these online groups -- they have that section 230
21 protection, they think, that will protect them from this
22 kind of action.

23 Have you all been able, back there in the back, to
24 make any purchases or watch any videos online? Can you
25 switch what you may have seen?

1 All right. So they're punching in. Watch
2 Hangover 3. Now, that's in the theaters right now.
3 Everybody knows that that's not supposed to be online.
4 Google knows that's not supposed to be online. They ought
5 to have a list of what's in the theaters and at least block
6 that, and she's going to -- we don't want to watch much
7 illegal content, but that's the real deal. That's the
8 movie.

9 I mean, we have videos of one of my investigators
10 -- 14-year-old watching Django Unchained, and the unchained
11 version is extremely violent, and she watched it while it
12 was in the theaters, and so, it's so easy for a young person
13 to go online and watch a movie that we raise cane with the
14 motion picture industry about keeping them out of the
15 theaters. You know, we have all the R and all these
16 different things.

17 Well, they can watch it on -- I mean, it's that
18 easy. They're sitting back there doing that live. So, you
19 know, most of us don't sit around and think about trying to
20 put these things, these queries in a computer, but our kids
21 do, and that's the ones that, you know, these -- that's who
22 these dangers are hurting.

23 So are you all going to do another one?

24 That's an online example of buy prescription
25 drugs. Is that without prescription.

1 UNIDENTIFIED SPEAKER: Yes, sir.

2 MR. HOOD: All right. So they're online right
3 now. Buy prescription drugs without a prescription. That's
4 how easy this is.

5 If we can go back to the slides. I think I need
6 to move through and let my panelists go forward.

7 Where were we on -- what buy were we on?

8 UNIDENTIFIED SPEAKER: We were (indiscernible)
9 spice.

10 MR. HOOD: Okay.

11 We made a spice buy.

12 UNIDENTIFIED SPEAKER: It's essentially the same
13 as the --

14 MR. HOOD: Online?

15 It was from a Google advertiser, right?

16 UNIDENTIFIED SPEAKER: Correct.

17 MR. HOOD: And see the Google ad, the part in the
18 tan there? They've also got ads up on the right, the right
19 side of the column, but that was a purchase my investigators
20 made of spice, and these purchases were made June of last
21 year. So it was June of 2012.

22 We made a buy. Got it delivered. There's the
23 test of it..

24 UNIDENTIFIED SPEAKER: (Indiscernible.)

25 MR. HOOD: YouTube prescription drug? No.

1 Tom is going to go through the YouTube part.
2 We'll skip through that, because I am running over my time.
3 Just skip on to the next.

4 UNIDENTIFIED SPEAKER: On through --

5 MR. HOOD: Yeah. Oh, wait. Back up. Back up.
6 Back up to where -- this guy right here -- he was telling
7 you how. That was a video that was online that they took
8 down off of YouTube. I mean, it was telling you how to buy
9 prescription drugs without a prescription.

10 I mean, think about if TV sold an ad to somebody
11 to get on TV about buying prescription drugs without a
12 prescription. We'd have a riot. We A.G.s would be all over
13 it. You know? But there again, because of this section 230
14 sword that the online search engines mainly are using,
15 they're trying to use it as a sword. I say that there are
16 ways for us to try to address this issue.

17 You can go on and flip through some more of them.
18 Go on down to -- yeah, that was the Django Unchained.

19 UNIDENTIFIED SPEAKER: (Indiscernible?)

20 MR. HOOD: No, we need to skip through that.

21 We're going to give you all copies of this slide,
22 if any of you would like it, but the Google transparency
23 report -- that's something that they produce. They say, you
24 know, hey, we're open and transparent. You go to that, and
25 it tells how many notices they've had of, you know, this

1 site that was showing Django Unchained or MP3 Skull or
2 whatever, but they've got all these notices, but they don't
3 take any action on it.

4 They don't delist them, and so, you know, it's my
5 position that I think that there are several legal issues
6 that we can address that will force them to come to the
7 table in earnest and make these changes and admit what
8 they've done, perhaps enter into MOU with us like the
9 Internet service providers did so that they will actually,
10 you know, use some best practices to try to block out the
11 auto complete, but also some of the search results that are
12 coming to the top ahead of, you know, legitimate sites like
13 iTunes, where you can actually go on and purchase.

14 At some point, there's got to be some happy
15 medium. As one of the panelists said this morning, they
16 don't think Congress is going to make this change. I don't,
17 either. You know? I just don't see the appetite for us
18 making the 230 change, and, as Marty mentioned to you this
19 morning, we're all -- I assume all of us are going to sign
20 on and say, you know, Congress, exempt states, and let us
21 have a criminal prosecution without them being able to raise
22 some type of section 230 defense.

23 I think that our civil investigative demands,
24 under state law, if issued to Google -- they will probably
25 try to remove us to federal court, which they really can't.

1 They'll try to raise that defense in state court, but
2 hopefully, once we get that information, I suspect we start
3 seeing emails and that type of information and we actually
4 get into their algorithm. The way they've been successful
5 in defending these cases before is to say wait a minute, our
6 algorithm is trade secrets. You know, nobody can see behind
7 the curtain, not see our wizard. You know?

8 I think what we will find, if we maybe get a third
9 party independent -- a truly independent group -- to look at
10 that algorithm, we're going to see where they've manipulated
11 it and that they've profited from it and that we'll have a
12 duty at that point to go forth and disgorge them of their
13 ill-gotten gains.

14 Now, what's the remedy? And I'm going to sit down
15 in conclusion. My remedy, what I suggest to you, as co-
16 chair of the Intellectual Property Theft Committee -- and my
17 colleagues, co-chairs of that committee -- I'm not speaking
18 for them. I'm just saying what I suggest that we do, and
19 one is that we issue civil investigative demands, and I'm
20 going to issue one as soon as this meeting is over with to
21 Google. I've already given them litigation hold letters,
22 and I suggest to you that I would hope that you would issue
23 litigation hold letters as well.

24 Particularly California, Kamala, because they're
25 located there primarily.

1 The second thing, you know, is I would encourage
2 their conscientious investors to encourage Google to stop
3 this illegal and inappropriate activity. Mississippi, for
4 example, our public employees retirement system is pretty
5 big, because we're all under one roof. We've got \$90
6 million worth of stock of Google, and I don't think the
7 state of Mississippi or the state of Nevada or some of your
8 other state employee retirement systems want to have stock
9 in a company that's promoting illegal activity and will not
10 work with the state. So I hope there are other
11 institutional investors that'll step forward and
12 advertisers, as were mentioned.

13 I hope advertisers, legitimate advertisers -- now,
14 there's a lot of, you know, these other advertisers they
15 have online. I hope advertisers will step up and encourage
16 Google, and, if they don't take some action, you know, pull
17 their ads with them.

18 And lastly, but most importantly, is the media,
19 and I think some are maybe here. The media -- to ask
20 questions of Google. Because, when I sent that letter
21 inviting Larry Page to come here to be on this panel, the
22 media started -- I had a press conference. I asked the
23 media to go ask him, and, when the media began to ask
24 questions, we started seeing these sites come down. So it
25 may take, you know, a lengthy process, but I think at some

1 point maybe we attorneys general can get some MOU signed
2 with Google and then, Bing and all the rest of the search
3 engines and try to get all the parties together and make a
4 difference in protecting our children.

5 I'm going to turn it over at this time to our
6 panelists.

7 Tom Galvin -- there again, Tom's executive
8 director of the Digital Citizens Alliance.

9 Thank you.

10 MR. GALVIN: Thank you, General Hood, and thank
11 you to the National Association of Attorneys General for the
12 invitation to be here to -- there you go -- to discuss
13 Internet safety. I also know the A.G.s have made it a
14 priority to look at Web sites that could potentially pose a
15 danger to consumers in the past, especially children.

16 So just a little bit about Digital Citizens before
17 we talk about our subject today. We're a consumer-focused
18 group made up of individuals, associations, and companies
19 trying to raise awareness about the dangers that can be
20 posed online and how we make the Internet a safer place.

21 Among the work we've done in the last year include
22 exposing how the cyber mafia operates, raising awareness
23 about various scams. For example, we did one after the
24 Newtown tragedy that showed how scammers were taking
25 Americans' money that they thought was going to go towards

1. the victims. We've done a lot of work on I.D. theft,
2. especially trying to point out how criminals exploit your
3. I.D., and finally and what we'll talk mostly about here
4. today, the potential dangers from drugs bought online.

5. Our investigation, our work, didn't start with
6. YouTube. It actually started looking broadly at teens and
7. drugs and trying to raise awareness about the ease by which
8. drugs can be purchased from rogue online pharmacies.

9. We're going to show a short video that shows a 15-
10. year-old who went online through search, found rogue
11. pharmacies, and then, he interacted by phone with some of
12. those pharmacies, and we filmed it, and they didn't care
13. whether he had a prescription, and they didn't care what his
14. age was. So I'm going to ask if we can roll that video now.

15. (Begin Video)

16. PHARMACY EMPLOYEE 1: This is the pharmacy. How
17. can I help you?

18. CUSTOMER: Hi. I'd like to order some Percocet,
19. please.

20. NARRATOR: Think it's hard to order painkillers?
21. Watch what happens when a 15-year-old boy orders the
22. powerful pain killer, Percocet, without a prescription.

23. PHARMACY EMPLOYEE 1: Okay. Which one are you on?

24. CUSTOMER: 7.5 milligram; is that right?

25. PHARMACY EMPLOYEE 1: Yes. Do you have a

1 prescription?

2 CUSTOMER: No, I don't have a prescription.

3 PHARMACY EMPLOYEE 1: No problem. You can get
4 that. You don't have a prescription, we can write them. No
5 problem.

6 NARRATOR: What can Percocet do to a 15-year-old?

7 PHYSICIAN: There are a number of bad things that
8 can happen to a kid that age, and somebody that age is not
9 going to be well-equipped to deal with it.

10 NARRATOR: The teen is working with the Internet
11 safety watchdog group, the Digital Citizens Alliance,
12 demonstrating how easy it is to order drugs from rogue
13 online pharmacies. Watch what happens when the same 15-
14 year-old initiates an order of the painkiller, Hydrocodone,
15 from another online pharmacy. He doesn't have a
16 prescription. He even shares his age, but it doesn't change
17 the outcome.

18 PHARMACY EMPLOYEE 2: What kind of payment are you
19 going to use?

20 CUSTOMER: I'm 15, so I'm using my dad's credit
21 card.

22 PHARMACY EMPLOYEE 2: So you're going to use your
23 credit card? So what type of credit card is that?

24 CUSTOMER: That is a Visa.

25 PHARMACY EMPLOYEE 2: Visa? Okay.

1 NARRATOR: Now, you --

2 (End Video)

3 MR. GALVIN: Okay. So it's important to note that
4 the teen stopped short of purchase for legal reasons, but we
5 did have an adult purchase drugs, Percocet, Tramadol, and
6 Hydrocodone, and, when we tested them, only two of those
7 turned out to be real drugs, and, when citizens go online to
8 purchase drugs without seeing a doctor or going through a
9 legitimate pharmacy, they're essentially bypassing all of
10 the safeguards that exist for your protection, and one of
11 the things we wanted to point out was, not only for adults,
12 but for teens, the dangers that exist there.

13 But, as we looked further at the issue of teens
14 and drugs, we came to realize that rogue pharmacies had
15 moved from Google, after the \$500 million settlement that
16 General Hood mentioned earlier, to a very popular Web site
17 for teens and preteens, YouTube, and that migration to
18 YouTube is disturbing, because it's not only, like I said,
19 the third most visited site, but it's obviously a very
20 popular site that if -- I have children and young children,
21 they go on that site. I'm sure many of you do as well.

22 And, as we looked into this, here are some of the
23 things we found, and we have some materials in front of you
24 if you want to look at them. They should be there.

25 We found hundreds of videos promoting the purchase

1 of drugs such as Oxycontin, Percocet, Tramadol without a
2 prescription. We found videos promoting the purchase of
3 cocaine, marijuana, and even GHB, which is a so-called date
4 rape drug. These videos were allowed to remain on YouTube
5 for months, if not over a year, and most alarming is Google
6 was profiting from these videos by running ads with them.
7 General Hood showed us some examples. We'll talk a minute
8 about that.

9 So how does Google profit? When someone wants to
10 put a video on YouTube -- they're a video producer, and they
11 put that video on YouTube. Google asks whether they want to
12 monetize that video, and, when they say yes, which many
13 people do, at that point, Google will begin running ads, and
14 then, they'll split the ad revenue with the video producer,
15 in this case, rogue pharmacies.

16 So, from that standpoint, it's distressing,
17 because it effectively makes Google partners with bad actors
18 who are promoting drugs or other dangerous activities
19 online, and it turned out, while we started this
20 investigation among teens and drugs, we began to look at it
21 more broadly because of the volume of teens and preteens who
22 go on YouTube and the things that were available to them.
23 So, as we looked, we realized it wasn't just drugs that had
24 infested YouTube.

25 We found videos promoting things like prostitution

1 and escorts, fake passports and I.D.s, and content theft,
2 and, as we said, in each instance, Google not only allowed
3 these videos to run on YouTube, but ran ads that allowed
4 them to profit. I'm just going to show you a couple
5 examples, and I think one of my colleagues is going to show
6 some examples as well.

7 Do it.

8 So I'm going to stand up for this. So this is a
9 screen shot of buy Percocet online. You can see the --
10 thank you. I'll do it this way.

11 So you can see the screen shot of buy Percocet
12 online. That was the thing. It goes to an online rogue
13 pharmacy, and to the right is a Google ad for chronic pain.
14 So Google's analytics knew enough to know that the video
15 dealt with drugs, Percocet. So they ran an ad, because
16 oftentimes, they'll try to run an ad that's relevant to it.

17 This video went online February 2012 and didn't
18 come down 'til last -- ten days ago when General Hood had
19 his press conference. It was among the several thousand
20 videos that came off of YouTube in the following days.

21 The next one is a video that actually offered a
22 lot of different types of drugs. What they -- what the
23 video producers will do is they will include the Web site
24 they want you to go to, because, in the end, these are just
25 promoting Web sites and ways to do it.

1 So, in this case, it was offering quality
2 marijuana, and it had an ad to the right, which was for,
3 again, pain relief as they tried to make the connection
4 between different types of drugs. This one had been on
5 since March of 2013. So this was a relatively new ad, but
6 had been on for a few months, and it just wasn't,
7 unfortunately, drugs that were on there.

8 Here was the search find underage prostitute and
9 the first ad that -- just for the search result, the ad that
10 showed up for the search result was a Target ad, which I'm
11 guessing Target probably doesn't want to be associated with
12 search results for find underage prostitute.

13 And finally and one that I find particularly
14 troubling -- this was how to forge a passport, and it's fake
15 passport USA step-by-step. It was up from May 2012 for a
16 little over a year with over 12,000 views, and the ad
17 against it running to the side was immigration appeal
18 lawyer.

19 The other ad that was associated with this video
20 was ways to get a green card. So the analytics knew enough
21 to make it an immigration appeal ad connected to it or a
22 green card, because it dealt with a passport.

23 When you go to the Web site that this video is
24 trying to get you to go to, it has over 100 different
25 offerings, fake passports, fake driver's license, fake

1 utility bills, fake credit cards, all in, you know, as we
2 all know, the fake utility bills are -- a utility bill is
3 something you need to be able to establish residency. So,
4 whether you're a terrorist, a criminal, or someone who's
5 trying to get around immigration law, it was a how-to Web
6 site. That Web site still exists.

7 This driver's license PSD video producer, while
8 they took down this ad when we promoted it -- when we raised
9 an issue about it ten days ago, this video producer still
10 exists, and there is a video on there still, "get a fake
11 utility bill, fake Utah utility bill." My gut tells me, by
12 the time we're done with this presentation, that'll be off
13 YouTube, but it just shows four different examples of ways
14 in which, unfortunately, there is dangerous stuff on
15 YouTube, and unfortunately, Google is profiting off these
16 things.

17 So, as I mentioned, when this got publicized about
18 ten days ago, Google scrubbed YouTube, and that is a good
19 thing, but the question is is it permanent. Because, if
20 they don't have a systematic approach, there are -- we won't
21 solve the problem, and there are still today dangerous
22 videos on YouTube.

23 There's a second video I was going to show, which
24 is very fast. If we can run that.

25 Oftentimes, these videos are very rudimentary. It

1 just shows this. You'll see the ad to the right for
2 business apps, and an ad's about to run there. So there's
3 two ads connected to this, even almost three. This is by
4 GHB. GHB is a date rape drug. So this promotes a Web site
5 that's saying you can buy GHB.

6 So that's really the challenge we're talking about
7 is how do we clean up YouTube and how can we get places that
8 are popular sites for teens and preteens in a better shape.
9 We appreciate the fact that Google made those changes after
10 the publicity, and we understand they have a tough job.
11 There's a lot of videos that go on to YouTube, but the
12 analogy I would use -- it's a little like the president
13 going into a troubled neighborhood for the day to take a
14 tour. The neighborhood gets cleaned up. The president
15 comes in. Everything looks good.

16 The president goes home, and the next day, what
17 happens? The neighborhood starts to get infested by the bad
18 actors again. So, unless there's a systemic change,
19 unfortunately we're going to see YouTube, as the attention
20 goes away, end up having all these videos come back on.

21 In the ten days since General Hood's press
22 conference and Google took some of those videos off YouTube,
23 we've already seen them start to repopulate, and, if the
24 only way to get rid of them is for someone to notify and not
25 have something as simple as Google isolating some search

1 terms like maybe reviewing every video that it says fake
2 passport or without a prescription, we're going to see the
3 same problem repopulate on YouTube over the next coming
4 months, and we'll be back in the same spot we were ten days
5 ago.

6 So we look at this and think Google is a great
7 company with brilliant minds. They have done amazing
8 things. They have created things like Google Glass and
9 self-driving cars, and we hope they'll focus some of those
10 great minds on cleaning up YouTube, and we hope we can help
11 make that happen. So thank you very much.

12 (Applause)

13 MR. CASTLE: So my name's Chris Castle, and I've
14 got slides. I'm the one with the slides.

15 So if we could pop those up.

16 We're going to talk a little bit today about
17 protecting consumers and advertisers on YouTube and also
18 what I call brand-sponsored piracy. I'm going to make three
19 main points.

20 YouTube has a catch-me-if-you-can business model
21 that allows it to profit from distributing dubious content
22 it could avoid posting. Advertisers and consumers are
23 routinely duped on YouTube, and advertisers are routinely
24 duped into supporting piracy through search and Web
25 advertising.

1 Now, it's important to realize that there are many
2 people at YouTube who view it as a replacement for
3 television, ultimately, that will be delivered directly to
4 the home over the Internet on Internet-enabled televisions.
5 YouTube claims it cannot apply TV network-style standards
6 and practices, because YouTube allows users to upload vast
7 quantities of videos, which is sort of like the person who
8 killed their parents complaining of being an orphan..

9 YouTube expects the user community to flag problem
10 videos. You'll hear this a lot in Google's reaction to
11 questions about what's on YouTube. They'll say well, you
12 know, our community flags these problem videos, but only
13 after Google opens the floodgates. So this kind of virtual
14 stoning, if you will, by the community is really sort of
15 hard to measure.

16 When is a video on YouTube flagged enough to get
17 them to take it down? What about the harm that occurs
18 between the time the video is uploaded and the time it's
19 flagged? No real answer.

20 So why do we care about this? Let's take another
21 example, and I realize this is kind of a parade of
22 horrors, but yet this is the case. Human trafficking on
23 YouTube -- after a NAAG meeting last year, Marsha Blackburn
24 and Carolyn Maloney, who are members of Congress, sent a
25 letter to Larry Page calling on Google to stop promoting

1 human trafficking advertisements and links. Google paid
2 some money to anti-trafficking groups, but not much
3 happened. All the good Catholics in the room will recognize
4 an indulgence.

5 Until about September of last year, when an
6 Android Escort app. called Utoopi surfaced in the press
7 under the headline on RedState of, "Google Profits from Sex
8 Trafficking," -- now, bear in mind Utoopi, this same app.,
9 had been rejected by the app. store. So, if you look at
10 what the competition does, Apple was presented with this
11 same app., and they didn't let it in the app. store, but it
12 was let into what's called Google Player Android Market.
13 Now, that's the landing page of the app., and I just can't
14 imagine why Apple would have gotten any conclusion about
15 that app. that there was anything wrong with it, aside from
16 the join the sex club part.

17 Jane Hamsher, at firedoglake, just to be on the
18 other side of the political spectrum, got a reaction from
19 Representative Maloney about this the next day, and her
20 reaction was appalling beyond belief. Carolyn Maloney then
21 sent another letter to Larry Page calling his attention to
22 the app. and asking that it be removed, and she had an
23 interesting point.

24 "Utoopi is engaged in an effort to recruit into
25 the sex trafficking business those who are college age or

1 younger," and, within 24 hours, the app. was gone. Now, so
2 what is the connection to YouTube?

3 Well, Utoopi has had a promotional video on
4 YouTube, and we're just going to go over there right now,
5 and I'm going to play you a little bit of it promoting the
6 app.

7 (Begin Video)

8 NARRATOR: Hi. It's our pleasure to present
9 Nicole. Nicole lives in Barcelona. She's an independent
10 and modern girl. In the morning, she works in an office in
11 the city center. She's professional and a quick learner.
12 She likes to keep herself fit. She loves shopping, fashion,
13 and going out with her friends.

14 She knows how to have a good time. Additionally,
15 Nicole is an independent escort, and, when she has free
16 time, she goes online to find company. You can find out
17 where she is on the map, and, not only her, but her
18 girlfriends, too. You can see all of them at --

19 (End Video)

20 MR. CASTLE: You kind of get the idea, right?

21 Now, bear in mind this is basically a promotional
22 video for an app. that Google removed with an apology after
23 a complaint by two members of Congress that clearly, you
24 know, got their attention. Right? So, when you look up
25 here in the right-hand corner, as Tom had indicated before,

1 there's an ad up here, which I don't know what it's for, but
2 it's a paid ad, and that advertiser almost certainly did not
3 intend that the ad be shown against this video, which, I
4 think, pretty clearly violates YouTube's terms of service to
5 the point where, I'm sure, it will probably be off the
6 service by the time we get off of this panel.

7 Now -- oops. Let me go back.

8 So, if you think of this from the point of view of
9 the flagging by the community, I guess what happened here
10 was that the particular community of two members of Congress
11 did not -- RedState and firedoglake -- did not actually
12 specify the particular video on YouTube that needed to be
13 taken down, just the app. that needed to be taken down from
14 the store after Google apologized. So you can see this is
15 really flimsy stuff. You have duped advertisers, right?
16 This is, I think, a pretty big problem.

17 We tried another search of tie teen girls, which I
18 won't actually go out to the YouTube to do, but what you got
19 back in search results on that was sex tourist videos and
20 more duped advertisers. So there's tie teen girls. There
21 is one video with some tied teen girls and promoting this
22 Web site of the prostitution area of Bangkok, and there is
23 duped advertiser number one, who probably did not intend for
24 his campaign ad to show up in a video for tie teen girls.

25 Then, we tried Anwar Al-Awlaki, and what we got

1 back on that was dissemination of Jehadi propaganda, more
2 duped advertisers, and some rather strange YouTube Channel
3 partners, because these videos are monetized. So, for
4 example, there he is. We all know who he is, and, if you
5 look at the arrow, that's an ad for Mazda.

6 Now, I can almost guarantee you that Mazda did not
7 intend for that ad to show up in that video, and, of course,
8 one of the reasons these ads show up in these videos is
9 because Google doesn't allow their advertisers to make the
10 choice about, at that level of granularity, about where they
11 want the ads to appear. You sort of take all Google
12 platforms. I think Ben's going to talk about this some more
13 -- or not, and it's really a contract of adhesion that
14 doesn't allow for much -- any negotiation.

15 So YouTube is nothing like television.
16 Advertisers are duped and, frankly, I think, should get
17 refunds for a lot of these videos, and, on the sex
18 trafficking part, what we saw was that, when someone stands
19 up and takes them on head-on, the community, that community
20 will win in the long run, particularly the wives and mothers
21 of that community, who will demand action, and they will get
22 results rather than indulgences.

23 So let's talk a little bit about brand-sponsored
24 piracy. You may not have heard that term. It's something
25 that we kind of use around the shop, and I'll give you this

1 definition. It's the inadvertent purchase by legitimate
2 media buyers of advertising inventory from pirate sites
3 facilitated by deceptive advertising networks that often
4 disguise the advertising served to pirate sites through an
5 affiliate reseller network with ads that are priced by
6 traffic from searches by users of major search engines or
7 what I call the unholy alliance. You know, it also kind of
8 sounds like RICO, but maybe not. So that's what it looks
9 like.

10 Now, we didn't do anything special to find this
11 site. This is an illegal music site, and what we saw when
12 we got there was an ad for Pepsi. This obviously was a
13 little back in January when we took this screen cap
14 advertising the Super Bowl halftime show. We also saw an ad
15 for Turbo Tax and Verizon.

16 So you can understand why a consumer going to this
17 site would think it was legitimate, because it looks
18 legitimate, doesn't it? It's got three big brands
19 advertising right there, none of whom, I'm sure, had any
20 idea that they were being served there, and I will tell you
21 -- and take my word for it -- that in the HTML code of this
22 site, if you look down, it's a who's the advertising network
23 that they are connected to -- they have a Google ad sense
24 (sic) publisher code.

25 So, if you think of it this way -- I realize that

1 was a lot of elements that I just threw at you. If you
2 think of the money and the traffic as separated, the money
3 starts with the brand. It always starts with the brand.
4 The brand has a contract with their ad agency that says
5 don't serve my ads on pirate sites and other bad things.

6 The ad agency has a deal with the ad network that
7 says don't sell my client's ads on pirate sites, and the ad
8 network has a deal with its inventory providers that say I
9 won't do business with you if you're a pirate site, and
10 then, they serve with the pirate sites, and, of course, one
11 of the reasons they do that is because somewhere in here, if
12 they're dealing with Google, there is this contract of
13 adhesion that advertisers have to sign that basically
14 prevents them from doing anything about where their ads
15 appear, and I think Ben's going to talk about that as well.

16 Then, you have the traffic sites. So how does
17 this become valuable? You have users that go to search
18 engines, and, as we've seen, very easily find pirate sites,
19 and then, that drives traffic back to the ad network, where
20 it's very often the affiliated ad network of the search
21 engine.

22 How do we know that that happens? Well, in the
23 Mega Video indictment, the government told us that the Mega
24 conspiracy had contracted with companies such as Ad Right
25 and Google Ad Sense for advertising on Mega Video, which is

1 probably the biggest piracy bust in the last century.

2 As General Hood mentioned, Google receives between
3 15 to 20 million DMCA take-down notices a month for search
4 alone. That doesn't include YouTube. It doesn't include
5 Blogger or any of their other properties.

6 That's the Google transparency report, which you
7 can find online. Google accumulates all these notices and
8 updates them pretty much in real time.

9 That's a close up of the total number of URLs they
10 received in the last month. That was taken about a week
11 ago. So already this month, we're over 16 million, and very
12 often, tens of thousands, of not hundreds of thousands of
13 these notices are sent to the same sites for the same files
14 that have just been repopulated with different links after
15 Google has disabled the link, the indexed link to them in
16 search. So they just come right back. This is the whack a
17 mole effect that you probably have heard about.

18 Now, Google's response to this on the advertising
19 part -- I love this. "To the extent there's a suggestion
20 that Google ads are a major source of funding for major
21 pirate sites, we believe it is mistaken." Not that they
22 would know or anything, or maybe it's a major source of
23 funds for minor pirate sites or a minor source of funds for
24 major pirate sites.

25 And then, Mr. Schmidt tells us to follow the

1 money. This is what Google always says. General Hood
2 alluded to this before. Go to the payment processors and so
3 on, but recently, he said something interesting, which is
4 new, in my experience. "If people are making money by
5 stealing copyright, we can find them because the money has
6 to go somewhere." Now, I find that to be very interesting,
7 because, if the money is going somewhere and Google knows
8 about it, why would that be if they weren't paying the
9 money?

10 So follow the money. Let's follow the money.
11 Here's MP3crank with a well-known thief. They're making the
12 Drive sound track available, which is for a motion picture,
13 and strangely enough, there's BMW that has an ad there. Who
14 would ever have put that together, that a BMW ad would get
15 served on the Drive sound track? So we follow the money.
16 We follow the money. It starts with BMW, ends with the
17 thief. We follow the money.

18 I don't really understand what the big mystery is
19 about this, but the truth is advertisers don't like to be
20 duped, and, if you go to them and explain this to them and
21 tell them that you want to help them, they welcome the help,
22 for the most part. We've done this with BMW, General
23 Motors, Levis, Guitar Center, a lot of big brands, and this
24 letter that we got from Guitar Center pretty much tells you
25 what they do.

1 They thank you for bringing it to their attention.
2 They call their ad agency and tell them put this site on the
3 blocked list. It goes on the blocked list, and that's the
4 end of it. It takes about an hour. So it's really not a
5 big process. It's not burdensome. It's something that the
6 advertisers want to do.

7 They don't say come back to me when you've
8 adjudicated them and infringed or in the highest court in
9 every land where the Internet obtains. You know? They
10 don't say that to you. They say we don't want to be
11 associated with that, and we'd like your help in trying to
12 block it.

13 So the other thing to remember is that pirate
14 sites offer the same content as legitimate sites. So, if
15 you have, like, a Spotify, which is an ad-supported site,
16 they're competing for those same advertisers and the same
17 advertising dollars right alongside the pirates. The
18 pirates, of course, can take much lower prices for the ads,
19 because they have no content costs, and that suppresses the
20 launch of legitimate businesses.

21 So, to summarize, the failure of standards and
22 practices creates a defect, which could be easily fixed.
23 Some might say it's a design defect. It allows YouTube
24 videos to advertise illegal and abusive activities. It
25 allows consumers and advertisers to be duped and drives

1 traffic to ad-supported sites, deceiving brands into
2 supporting the theft of intellectual property.

3 Thank you.

4 (Applause)

5 MR. EDELMAN: Thanks. I'll be brief, given the
6 time and given the privilege of participating after the
7 distinguished panel.

8 You know, it's striking to hear the laundry list
9 of bad behaviors that folks have talked about. I took the
10 liberty of trying to classify the behavior and classify it
11 basically into two groups for you. We have three categories
12 of Google activities where Google directly profits, where
13 Google places ads on its own services, syndicates ads onto
14 other people's sites, and then, those ads that they
15 syndicate onto other sites -- well, they could both be ads
16 that are promoting unlawful conduct and ads that are placed
17 onto unlawful sites.

18 Separately, there is a set of concerns as to
19 indirect profits. Auto complete certainly is in that vein.
20 Google doesn't make money directly from auto complete.
21 Rather, they make money indirectly from what might happen
22 after you use auto complete. So, too, for Google platforms
23 that host unlawful content, and, of course, the original
24 product, the algorithmic search product that makes it so
25 easy to find whatever kind of material you're looking for,

1 be it lawful or not.

2 Well, the claims for the top half versus the
3 bottom half of this list -- I think they're going to differ
4 somewhat, maybe differ importantly, differ in the extent to
5 which one would expect an immunity to apply, whether CDA 230
6 actually does or doesn't. Certainly, if some of us were in
7 charge, we might design the immunity, for example, to apply
8 less to the top half of the list than to the bottom of the
9 list.

10 Separately, I was struck by the variety of kinds
11 of bad behavior we've been talking about. Personally, I got
12 started here with the top section of this list, consumer
13 deception ads, and these are near and dear to me, just a
14 sampling of the deceptive ads here.

15 This is from my Web site from seven years ago.
16 Who would have thought that the deceptive ads were
17 widespread even then? You'll get advertisers who are
18 promising free ring tones, but the fact of the matter is
19 they're charging you \$10 a month or promising that you can
20 download WinZip, and, little do you know, they're going to
21 charge you \$20 to buy WinZip, when, in fact, WinZip should
22 be free. So there are problems in that vein, which I've
23 called consumer deception.

24 Other kinds of consumer deception, too -- taking
25 advantage of some of the most vulnerable consumers in the

1 country, folks who need a mortgage modification services of
2 one sort or another, be it green card, looking for small-
3 business grants, you name it. Those are all, broadly
4 speaking, consumer deception.

5 Then, there are bad practices arising out of
6 copyright concerns, as Chris just presented, programs that
7 mess up your computer. They'll do that with a very, very
8 high level of predictability. You install this program on
9 your computer, and it is going to mess up your computer
10 every single time, at least if you're buying a
11 pharmaceutical product. You might get lucky and get a
12 genuine, although General Hood's investigation certainly
13 gives us reason to doubt the likelihood of that actually
14 occurring.

15 Pharmacies, to me, are just a small part of the
16 problem. They're an interesting corner of the problem,
17 because the DOJ has investigated that so thoroughly and has
18 shown us the scope of the problems.

19 Now, a separate reason to praise DOJ's effort is
20 the level of proof that they've given us. You know, we
21 always had suspected that Google wasn't really giving this
22 their best shot. You look at the magic Google can
23 accomplish when they put their mind to it.

24 A car that drives itself, that can recognize the
25 difference between a squirrel and a cat and a Frisbee and

1 take different evasive actions according to the likely
2 predicted behaviors of each of those and the seriousness of
3 running over a squirrel versus running over a Frisbee. Now,
4 this is remarkable, and Google's car can do that. If they
5 can do that, why can't they recognize that free Oxycontin,
6 no prescription required is not a proper title for an
7 advertisement or for a video? You sort of feel like the
8 smart engineers are off doing something else, or maybe these
9 engineers aren't giving this their best shot.

10 Well, I have here just a sampling of the pieces of
11 evidence that have always led me to suspect Google wasn't
12 trying very hard. You know, the next-to-last on this list
13 is particularly striking. Folks don't remember this Wall
14 Street Journal article from about three years ago. Google
15 had extended a line of credit to advertisers whose sole
16 business was to infringe copyrights, the sorts of thing that
17 Chris was explaining to us.

18 Well, Google was their biggest creditor, and, in
19 bankruptcy proceedings, it came out that Google had loaned
20 them money to buy ads to help users infringe copyright.
21 Absolutely remarkable. But we only get small pieces of this
22 coming out, because, of course, the litigation defenses have
23 been pretty successful. So I want to suggest a couple next
24 steps that might be worth thinking about.

25 First, as Chris says, advertisers are paying for

1 this mess, and you might think that this is a breach of
2 contract. After all, it can't be that an advertiser has
3 seriously contracted to place their ads on sites that
4 provide unlawful material. To start with, that would be an
5 illegal subject matter, right, and you can't have a contract
6 for which the subject matter of the contract is the
7 performance of an illegal service.

8 So an advertiser could sue Google. This is a
9 claim that's near and dear to my heart, because my first
10 matter as an attorney -- I guess the first month after I
11 passed the bar, brought a class action against Yahoo for
12 putting advertisers' ads in the wrong place, which they
13 absolutely had done, and I had excellent, top-quality proof
14 of that.

15 Well, Yahoo had some contract defenses. Google
16 saw that case and saw some other rumblings in the context of
17 click fraud class actions and imposed onto advertisers just
18 some remarkable revisions, insertions into the ad words,
19 terms, and conditions contract, the standard form contract
20 that every advertiser must accept. This is the section
21 where Google tells an advertiser where their ad will be
22 placed, an awfully important section, of course.

23 If you're buying advertising, the most important
24 thing to know is what kind of advertising you're buying.
25 Where will the user see it? So Google says ads may be

1 placed in any place where Google places ads.

2 If any of you are familiar with the works of
3 Dr. Seuss, right, this sort of sounds like a line out of
4 Green Eggs and Ham. The ads are placed in the places where
5 we place them where we place them in the places where
6 they're placed. I love that guy.

7 (Laughter)

8 I think maybe he could be a lawyer for Google.
9 This is incredibly circular. In any consumer contract, we
10 would deem this to be an unfair and deceptive trade
11 practice. Here in Massachusetts, you'd get out 93(a).

12 Now, a lot of the advertisers that Google does
13 business with are pretty small. We saw some big advertisers
14 in Chris' presentation. Fact is a lot of advertisers are
15 mom and pop shops who could never file suit against Google.
16 The big ones, meanwhile, have so much at stake, so many ways
17 that they're counting on Google to treat them fairly.

18 Imagine if you went to Google and you searched for
19 Pepsi and it showed you Coke instead. Not totally out of
20 the question. It happens all the time that you search for
21 Hyatt and you get an ad for Hilton. Would Pepsi or Hyatt or
22 Hilton want to pick a fight with Google?

23 Here we get to the remarkable problem of Google's
24 dominance. If there were ten small Googles each with ten
25 percent market share, I think our conversation would

1 actually sound quite different today, because a few of them
2 would have sent representatives to this meeting to seek the
3 good auspices of NAAG, to seek our endorsement and
4 cooperation to find a way to fix the problem, and we'd be
5 well on the way to fixing the problem, but with only one
6 Google, they can stonewall much more effectively against the
7 attorneys general, and they can stonewall more effectively
8 against the advertisers.

9 So, to the extent that some of you are thinking
10 about the competition issues, which certainly have been
11 raised in multiple states, it seems to me that's awfully
12 important, and that could help with the harsh terms and
13 conditions here. If we can't count on advertisers to bring
14 suit on their own, what's left? Well, certainly attorneys
15 general could bring complaints as to the deceptive
16 advertisements or other unlawful advertisements.

17 CDA 230 offers this important defense. No
18 provider of an interactive communications service shall be
19 treated as a publisher or speaker of any content from any
20 other publisher. Does that really cover a company in the
21 advertising business? Certainly, no one in Congress thought
22 so.

23 You can read the remarks on the floor of Congress,
24 read the congressional record. This was a statute passed to
25 deal with the problem of liable, liable on AOL discussion

1 forums. It wasn't about advertising at all. Frankly, I
2 think the case law interpreting CDA 230 is headed in a crazy
3 direction without much support in the statute, but, be that
4 as it may, we don't get to rewrite CDA 230, and there
5 doesn't seem to be much legislative appetite for changing
6 it.

7 Well, the criminal exception is an awfully
8 important exception, probably underused for the kinds of
9 copyright problems that Chris showed us. These are problems
10 that all have both civil and criminal statutes on point. If
11 you flag the criminal statute, then CDA 230 doesn't apply at
12 all, and, whatever problem you thought CDA 230 was going to
13 give you, that problem is solved, thanks to the underlying
14 criminal violation.

15 Also, claims arising out of false advertising
16 where Google itself made some particular statement. If they
17 promised to screen for unlawful conduct, unlawful content,
18 unlawful advertisements and then, they didn't, that could be
19 the basis of an independent act, where it's Google's own
20 failure to follow through in their promise that gives rise
21 to the liability.

22 Now, finally, discovery, documents -- you think
23 about the magic of actually getting to see the internal
24 communications, see the source code, the computer code, the
25 business records. It's a little bit unreasonable to think

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1 one could prove the case just from the material available on
2 the public Internet, and so, General Hood's requests for
3 documents, I think, is very well-taken, and all of you have
4 the power to get the documents. Maybe that's a strategy
5 that's worth thinking about.

6 You know, I have a crawler, a robot that goes
7 around searching for places where ads shouldn't appear, and
8 it's pretty good. It's a hard working robot. It works
9 around the clock. Actually, here are 100 of them, so it's
10 100-fold twins.

11 They find regularly thousands of instances of
12 Google placing ads into invisible windows, into spyware and
13 adware, popups, typo squadding, not to mention the sorts of
14 objectionable content and unlawful content that we've heard.
15 It's tempting to show you, say, what my robot caught in the
16 last 24 hours, and I've prepared a few examples of that,
17 but, given that the rest of the panel has done such a good
18 job, we've got the poster boards and so forth, perhaps I'll
19 leave it at that.

20 Thanks.

21 (Applause)

22 MR. HOOD: We've exhausted our time, and I'm
23 really appreciative of the panel and the way that this
24 meshed together. I had nothing to do with it. I think that
25 the panel went through the issues in a fast manner.

1 So we're supposed to have a break right now.

2 You want to take a couple question?

3 UNIDENTIFIED SPEAKER: Sure. (Indiscernible.)

4 MR. HOOD: Okay. Maybe we'll take about five
5 minutes, if any of you have any questions. If not, they'll
6 be available to hopefully answer any, if any of you have any
7 questions. Now we'll take them.

8 UNIDENTIFIED SPEAKER: Jim, I'm wondering if you
9 could get from the two speakers that kind of had outlines --
10 if you could get that and make those available to us. I'd
11 be very interested.

12 MR. HOOD: All right. I'm going to -- I wanted
13 them, too. So --

14 UNIDENTIFIED SPEAKER: Okay.

15 MR. HOOD: -- what we'll do -- we will get them
16 and circulate them through email to you.

17 UNIDENTIFIED SPEAKER: Okay. I'd appreciate that.

18 MR. HOOD: Okay.

19 All right.

20 UNIDENTIFIED SPEAKER: Hold on one second.

21 UNIDENTIFIED SPEAKER: Okay.

22 UNIDENTIFIED SPEAKER: Thank you to this panel. I
23 think it was important for all of us.

24 A couple things. We are going to take a break,
25 and we'll start up again at 3:00. Former Attorney General

1 Rob McKenna will be leading that discussion.

2 For those of you who are going to the reception
3 this evening and then the baseball game, there's going to be
4 four different buses. So you can go at either 5:00 -- what
5 is it? Right outside on the first floor?

6 UNIDENTIFIED SPEAKER: Right outside the first
7 floor.

8 UNIDENTIFIED SPEAKER: Right outside of the first
9 floor at 5:00, 5:15, 5:30, or 5:45 will get you. The
10 reception itself is from 5:30 to 6:30. So, depending on
11 what your schedule is, you can take every 15 minutes
12 starting at 5:00 until quarter of 6:00 catch one of the 4
13 buses, and, with that, we'll take a break and reconvene at
14 3:00.

15 (Break)

16 (Conclusion of Audio)

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C E R T I F I C A T I O N

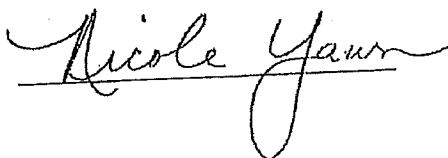
I, Nicole Yawn, certify that the foregoing transcript is a true and accurate record of the proceedings.

Date: June 27, 2013

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I, Nicole Yawn, certify that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Nicole Yawn". The signature is written in black ink and is positioned above a horizontal line.

Date: June 27, 2013

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